had in mind a far narrower application of the Act than that now taken by the Civil Service Commission in applying the Act. It was intended the Act "cover state and local government employees who participate actively in federal elections." Senate Document No. 105, 76th Congress, 1st Session. The title of the Act itself announces its purpose to be "to prevent pernicious political activities." PL 753, 76th Congress, 1st Session. The Civil Service Commission, however, has failed to limit itself to such a standard. *In the Matter of George E. Arrington* (March 15, 1944) Dkt. No. 120, the Commission has said:

> "No stigma of that character [perniciousness] attaches a determination by the Commission that a respondent has violated the Act."

In the Matter of France Paris, 7 Sept. 1944 Dkt. No. 122.

However, apart from the conclusions of the Commission as to what stigma attaches to the determination, a review of the effect of such findings clearly has a greater onus in the world of reality than the Commission admits. Salt Lake Deseret News Telegram, November 5, 6, 7, 1960. The obvious reason for such social compact is that in our democratic structure of government the public has learned to expect that the plain meaning of statutes will be tested by judicial conduct of the same nature. The Commission has not, however, seen fit to embrace such a conclusion, nor did they apply such a standard in the instant case. As the Act would contemplate "pernicious" conduct, the Commission has not made such a requirement to find a violation that warrants dismissal. *In the Matter of France Paris*, supra; *In the Matter of Alexander H. Stewart*, January 13, 1945,

Dkt. No. 124; Friedman and Klinger, *The Hatch Act: Regulation by Administrative Action of Political Activities of Governmental Employees*, 7 Federal Bar Journal 6.

In refusing to recognize the intent of the Hatch Act framers, the Commission has itself legislated. In the instant case the record discloses no conduct on the part of the petitioners which can be called "pernicious" or that meets the standards of evil contemplated in the Act. In fact, the Commission ignored its own rule of "diminishing responsibility" in calling for the removal of petitioners. *In the Matter of Orin M. Bobbitt* (July 7, 1943), Dkt. No. 47. The actions here clearly show an action predicated in proper motive, and in response to the prodding of senior officials whose actions did not violate the Act. It therefore becomes essential that the Supreme Court accept the review and determine the intention of the Congress to the standards to be applied in finding a violation of the Act. There is a recognized need that administrative agencies spell out the reasons and basis of their actions in language related to the act they are charged with administering. *United States v. Pierce Auto Lines*, 327 U.S. 515, 66 S. Ct. 687, 90 L. Ed. 821 (1946).

2. The question presented is one of serious importance to every state in the union. By virtue of the "supremacy clause," Article II, Sec. 2 of the Federal Constitution, actions of the states are, when contrary to proper federal law, subordinated to the higher federal purpose. In the instant case, however, it is not the subordination of the actions of the state and its employees to an act of Congress that is complained of, but rather the subordination of the

states to arbitrary and unfettered discretion in a federal administrative body whose agents are not subject to the orderly democratic protest of election.

Congress has failed to provide any standard which the Civil Service Commission should adhere to in determining whether the actions of a state employee justify removal. Since the constitutionality of such an omission was not raised below, we are now precluded from such an assertion at this stage. However, if we are to assume that the act is constitutional, we must assume that Congress intended that the decisions of the Civil Service Commission be free from arbitrary and unreasonable results. Clearly this is implicit in Section 12(c) of the Hatch Political Activities Act, 5 USC 118K(c) since the judicial review is provided for. Certainly, therefore, the Civil Service Commission's orders and findings, where arbitrary, should be set aside.

The importance of judicial review by the Supreme Court is manifest. States are charged with the greatest portion of the day to day regulation of their citizens. Cultures, attitudes and needs vary greatly from state to state. As a consequence states are as jealous of their sovereignty as the Federal Government is of its powers. To allow a federal administrative agency to superimpose its judgment upon that of a state, without clear standards being set out for such action, could lead to the grossest form of interference with state soveriegnty unless the actions of the administrative agency were squarely in keeping with the Congressional intent and the framework of the Act.

Any legal fiction that the Commission's actions do not penalize a state which might disagree with its conclusion,

avoids the practical results of the Commission's powers. The Commission is given the power to determine whether the actions of a state employee warrant his removal from state service. Although the Commission may not remove the employee, if the state fails to acquiesce in the determination of the Commission, it is faced with the loss of federal funds which may have been budgeted or programmed for in reliance on the federal grant. There is no question that this gives the Commission heavy powers in controlling state action, and where the Commission acts arbitrarily, or because it has no set standard to apply, the federal courts should chart a path commensurate with due process for the Commission to follow.

3. The Civil Service Commission made a finding in the instant case that the actions of the petitioners were coercive in character and hence justified their removal. Appendix B. It is submitted that the finding of coercion and the policy adopted by the Commission in making such a finding are contrary to the Congressional intent and the clear meaning of the statute; and hence in predicating their determination that petitioners should be removed from state employment on such an erroneous standard, the Commission acted arbitrarily and capriciously and thus contrary to due process of law.

The statute requires by its plain meaning that the actions to violate Section 12a(2) "directly or indirectly coerce" any other officer or employee to make a political contribution. Indeed this is in keeping with the title of the act which would prohibit "pernicious" political activity. However, the Commission has not so complied with the

statutory mandate either in the instant case or as a matter of general application. *In the Matter of Loren M. Bobbett* (July 7, 1943) Dkt. No. 47, the Civil Service Commission expressed the conclusion that "coercive" activity was one of the most serious violations which a state employee could commit. In complete contrast, *In the Matter of France Paris,* supra, the Commission felt no stigma attached to a violation of the Act. *In the Matter of M. Clay Hankins* (January 22, 1944), Dkt. No. 100, the Commission indicated the voluntary contributions may be made and this will not violate the Act. But see *In the Matter of E. H. McEachren,* January 22, 1944, Dkt. Nos. 117, 116, 115. However, *In the Matter of William R. Hutchins,* January 22, 1944, Dkt. No. 114, the Commission abandoned the clear standard of "pernicious" political activity associated with the common understanding of the word coercion, and as a matter of *fact,* applied a standard that would characterize as coercive any association of persons to freely and voluntarily discuss the matter of political contributions. In so doing, there arises an inconsistency between the standards sought by Congress to be applied and those resulting from the plain language of the Act, and those being applied by the Commission. *In the Matter of Ben T. Huiet,* January 23, 1942, Dkt. No. 86; *In the Matter of J. E. B. Stewart,* January 23, 1902, Dkt. No. 79.

In the instant case the Commission referred to, and followed the unconscionable standard set out *In the Matter of William R. Hutchins,* supra. That the facts in instant cases would not support a finding commensurate with a common sense standard of coercion seems clear from the comments of the District Court on review. (R. 152, R. 161).

As a consequence, it becomes necessary for the Supreme Court to lay down the correct standard to be applied. The Commission here found coercion by a standard not recognized in the Act itself, and used this standard as a justification for removal. In doing so their actions cannot be couched in any other terms than unreasonable.

Much comment adverse to the present Hatch Act has been raised, *The Hatch Act — Political Immaturity*, 45 Georgetown Law Jnl. 233; Milton J. Esman, *The Hatch Act — A Reappraisal*, 60 Yale Law Jnl., 986. Some have said that since the adoption of the Act was upon the Consent Calendar of Congress, that contrary to the Supreme Court's assertion in *Oklahoma v. Civil Service Commission*, supra, the Act did not receive the full attention of Congress. If such is the case, the Court must not now preclude itself from properly attending to the interpretation of the Act commensurate with the clear legislative intent.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

WALTER L. BUDGE
Attorney General for Utah

RONALD N. BOYCE
Asst. Attorney General for Utah
Of Counsel

APPENDIX A

5 U.S. Code Annotated.

§ 118k. EMPLOYEES OF STATE OR LOCAL AGENCIES FINANCED BY LOANS OR GRANTS FROM UNITED STATES — INFLUENCING ELECTIONS; OFFICER OR EMPLOYEE DEFINED.

(a) No officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal agency shall (1) use his official authority or influence for the purpose of interferring with an election or a nomination for office, or affecting the result thereof, or (2) *directly or indirectly coerce, attempt to coerce, command, or advise any other such officer or employee to pay,* lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes. No such officer or employee shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of the second sentence of this subsection, the term "officer or employee" shall not be construed to include (1) the Governor or the Lieutenant Governor of any State or any person who is authorized by law to act as Governor, or the mayor of any city; (2) duly elected heads of executive departments of any State or municipality who are not classified under a State or muni-

cipal merit or civil-service system; (3) officers holding elective offices.

INVESTIGATIONS BY CIVIL SERVICE COMMISSION; REMOVAL OF EMPLOYEES; WITHHOLDING GRANTS FROM STATES

(b) If any Federal agency charged with the duty of making any loan or grant of funds of the United States for use in any activity by any officer or employee to whom the provisions of subsection (a) are applicable has reason to believe that any such officer or employee has violated the provisions of such subsection, it shall make a report with respect thereto to the United States Civil Service Commission (hereinafter referred to as the "Commission"). Upon the receipt of any such report, or upon the receipt of any other information which seems to the Commission to warrant an investigation, the Commission shall fix a time and place for a hearing, and shall by registered mail or by certified mail send to the officer or employee charged with the violation and to the State or local agency employing such officer or employee a notice setting forth a summary of the alleged violation and the time and place of such hearing. At such hearing (which shall be not earlier than ten days after the mailing of such notice) either the officer or employee or the State or local agency, or both, may appear with counsel and be heard. After such hearing, the Commission shall determine whether any violation of such subsection has occurred and whether such violation, if any, warrants the removal of the officer or employee by whom it was committed from his office or employment, and shall by registered mail or by certified mail notify such officer

or employee and the appropriate State or local agency of such determination. If in any case the Commission finds that such officer or employee has not been removed from his office or employment within thirty days after notice of a determination by the Commission that such violation warrants his removal, or that he has been so removed and has subsequently (within a period of eighteen months) been appointed to any office or employment in any State or local agency in such State, the Commission shall make and certify to the appropriate Federal agency an order requiring it to withhold from its loans or grants to the State or local agency to which such notification was given an amount equal to two years' compensation at the rate such officer or employee was receiving at the time of such violation; except that in any case of such a subsequent appointment to a position in another State or local agency which receives loans or grants from any Federal agency, such order shall require the withholding of such amount from such other State or local agency: Provided, That in no event shall the Commission require any amount to be withheld from any loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of such amount would jeopardize the payment of the principal or interest on such bonds or notes. Notice of any such order shall be sent by registered mail or by certified mail to the State or local agency from which such amount is ordered to be withheld. The Federal agency to which such order is certified shall, after such order becomes final, withhold such amount in accordance with the terms of such order. Except as provided in subsection (c), any determination or order of the Commission shall become final upon the expiration

of thirty days after the mailing of notice of such determination or order. As amended June 11, 1960, Pub.L. 86-507, § 1(4), 74 Stat. 200.

COURT REVIEW OF DETERMINATION OF COMMISSION

(c) Any party aggrieved by any determination or order of the Commission under subsection (b) may, within thirty days after the mailing of notice of such determination or order, institute proceedings for the review thereof by filing a written petition in the district court of the United States for the district in which such officer or employee resides; but the commencement of such proceedings shall not operate as a stay of such determination or order unless (1) it is specifically so ordered by the court, and (2) such officer or employee is suspended from his office or employment during the pendency of such proceedings. A copy of such petition shall forthwith be served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the determination or the order complained of was made. The review by the court shall be on the record entire, including all of the evidence taken on the hearing, and shall extend to questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may direct such additional evidence to be taken before the Commission in such manner and upon such terms

and conditions as to the court may seem proper. The Commission may modify its findings of fact or its determination or order by reason of the additional evidence so taken and shall file with the court such modified findings, determination, or order, and any such modified findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Commission's determination or order, or its modified determination or order, if the court determines that the same is in accordance with law. If the court determines that any such determination or order, is not in accordance with law, the court shall remand the proceeding to the Commission with directions either to make such determination or order as the court shall determine to be in accordance with law or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court shall be final, *subject to review by the appropriate circuit court of appeals as in other cases, and the judgment and decree of such circuit court of appeals shall be final, subject to review by the Supreme Court of the United States on certiorari or certification as provided in sections* 346 *and* 347 *of Title* 28. If any provision of this subsection is held to be invalid as applied to any party with respect to any determination or order of the Commission, such determination or order shall thereupon become final and effective as to such party in the same manner as if such provision had not been enacted.

RULES AND REGULATIONS; SUBPENA OF WITNESS AND DOCUMENTARY EVIDENCE; DEPOSITIONS

(d) The Commission is authorized to adopt such reasonable procedure and rules and regulations as it deems necessary to execute its functions under this section. The Civil Service Commission shall have power to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter pending, as a result of this act before the Commission. Any member of the Commission may sign subpenas, and members of the Commission and its examiners when authorized by the Commission may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. In case of disobedience to a subpena, the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The Commission may order testimony to be taken by deposition in any proceeding or investigation, which as a result of this subchapter, is pend-

ing before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Commission as hereinbefore provided. No person shall be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Commission in obedience to a subpena issued by it: Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

EMPLOYEES OF AGENCIES NOT FINANCED BY UNITED STATES AS EXEMPT

(e) The provisions of the first two sentences of subsection (a) of this section shall not apply to any officer or employee who exercises no functions in connection with any activity of a State or local agency which is financed in whole or in part by loans or grants made by the United States or by any Federal agency.

DEFINITIONS

(f) For the purpose of this section—

(1) The term "State or local agency" means the executive branch of any State, or of any municipality or other political subdivision of such State, or any agency or department thereof.

(2) The term "Federal agency" includes any executive department, independent establishment, or other agency of the United States (except a member bank of the Federal Reserve System).

APPENDIX B

Decision of 10th Circuit Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

FILED

United States Court of Appeals
Tenth Circuit

November Term — 1960

STATE OF UTAH and VERNON P. BRIDGE,

Appellants.

—vs.—

UNITED STATES OF AMERICA and the UNITED STATES CIVIL SERVICE COMMISSION,

Appellees.

Number 6447

STATE OF UTAH and HORACE J. GUNN,

Appellants.

—vs.—

UNITED STATES OF AMERICA and the UNITED STATES CIVIL SERVICE COMMISSION,

Appellees.

Number 6448

STATE OF UTAH and PANOS J. GEORGOPOULOS,
Appellants,

—vs.—

UNITED STATES OF AMERICA and the UNITED STATES CIVIL SERVICE COMMISSION,
Appellees.

Number 6449

APPEALS FROM THE UNITED STATES DISTRICT OF UTAH, CENTRAL DIVISION

Vernon B. Romney (Walter L. Budge was with him on brief) for Appellants.

Sherman L. Cohn (George Cochran Doub, A. Pratt Kesler, Morton Nollander and Alan S. Rosenthal were with him on brief) for Appellees.

Before MURRAH, Chief Judge, LEWIS, Circuit Judge and RICE, District Judge.

MURRAH, Chief Judge.

These consolidated appeals are from the District Court's separate judgments affirming the Civil Service Commission's orders, which found the individual appellants guilty of activities prohibited by Section 12(a) of the Hatch Political Activities Act, 5 U.S.C. § 118(k)(a),[1] and ordering them discharged from their state employment.

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1. Section 12(a) provides that: "No officer or employee of any state or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any federal agency shall (1) use his official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof, or (2) directly or indirectly coerce, attempt to coerce, command, or advise any other such officer or employee to pay, lend or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes * * *"

From evidence adduced on hearing before the Civil Service Commission and duly certified to the District Court on review,[2] the court found that the individual appellants, Bridge, Gunn and Georgopoulos were all employees of the Utah Road Commission and subject to the jurisdiction conferred upon the Civil Service Commission by the Act; and that each of them did "directly or indirectly, coerce, attempt to coerce, command or advise other officers or employees subject to the Act to pay or contribute part of their salaries or compensation to the Republican Party organization of Utah for political purposes."

It appears from the record, without dispute, that the Republican Party of Utah planned a fund-raising dinner with tickets to be sold for $50.00 a piece. The various agencies of the state government were assigned quotas of tickets to be sold. Burton, Director of the Road Commission, wrote

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2. Section 12(c) of the Act provides that: "Any party aggrieved by any determination or order of the Commission * * * may * * * institute proceedings for the review thereof by filing a written petition in the district court of the United States for the district in which such officer or employee resides * * *. The review by the court shall be on the record, entire * * * and shall extend to questions of fact and questions of law. * * * The court shall affirm the Commission's determination or order * * * if the court determines that the same is in accordance with law. * * The judgment and decree of the court shall be final, subject to review by the appropriate circuit court of appeals * * *."

a letter[3] to his subordinates, stating that the Commission had been assigned three tickets. This was duly received by appellant Bridge, Chief of the Commission's Right of Way Design Department, and relayed to his subordinates with an accompanying message to the effect that each should contribute 1.3% of his monthly salary.[4] When the response to this letter was unproductive, a meeting of the employees was called, at which appellant Georgopoulos, Senior Highway Engineer and Acting Assisting Chief of the Right of

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[3] State Road Commission of Utah
422 State Capitol
Salt Lake City, Utah

May 15, 1958

Dear Mern Bridge: As you know, our government is based on a two-party system. Every citizen should participate and support the party of his choice. Only by active participation by all citizens and continued support of the two-party system can our form of government be preserved. Administrative leadership changes at the will of the people. At present, it is represented by the Republican Party, in which we all have full confidence.

As you know, it takes money to organize and maintain a party organization, so that it may keep the public informed and carry out the usual election procedures. All should support their party organizations by supporting fund-raising drives or by direct contributions.

On May 21, the State Republican party will hold a fund-raising dinner at the New Utah Motel Auditorium.

All the various departments of the state government have been requested to help in this drive. The State Road Commission has been asked to contribute its share to this event. In prorating the tickets given to us, we have assigned your department 3 tickets.

May we ask your cooperation and support of this assignment which has been given us. Will you please handle this prior to noon Tuesday, May 20th. We shall contact you for a report at that time.

Very truly yours,
C. Taylor Burton
Chairman, State Road Commission

May 16, 1958

[4] Attached is a letter from Mr. Burton.
Since these tickets are $50.00 apiece, the most equitable manner of handling this is for each employee to donate 1.3 per cent of his monthly salary.
Will you all kindly cooperate in order not to throw an additional burden on a few.
Kindly show the amount on the back of this letter you will donate on May 20, along with your name. The tickets can then be raffled off by picking three names of those donating.

V. P. BRIDGE
Chief Right-of-Way Designer

Way Design Department, stated that the employees "may not receive deserved pay raises if we [don't] contribute to the Republican Party." Following this and other admonitions, the quota was met and turned over to appellant Gunn, the Commission's Public Information Officer, who had also engaged in solicitations among the employees.

Newspaper editorial comment on these activities apparently brought the matter to the attention of the Civil Service Commission with consequent investigation resulting in these statutory charges. The charges were subsequently dismissed as to Burton on the grounds that his "principal employment" was not with the Road Commission and he was not therefore within the scope of the Act.[5] The Commission also invoked its administrative discretion to dismiss the charges against the Road Commission Secretary, Allred, on the grounds that "his participation was minimal in amount meager in result."

On review of the Commission's discharge orders, the trial court found that each of them was "supported by substantial evidence and in accordance with law."

At the threshold of the appeal, the United States, as appellee, takes the position that the discharging orders have become moot; and that we should therefore remand the cases to the District Court with directions to dismiss the actions. This rather anomalous contention is based upon the appellee's construction of Section 12(c) of the Act, (5 U.S.C. § 118k(c)), which provides in substance and effect that any party aggrieved by any determination or order of

5. 5 U.S.C. § 118K(a), note 1, supra.
5. 5 U.S.C. § 118K(c), note 2, supra.

the Civil Service Commission may, within 30 days after notice of the determination or order, institute proceedings for the review thereof by filing a written petition in the appropriate District Court; but that the commencement of such proceedings shall not operate to stay the challenged determination or order of the Commission unless "(1) it is specifically so ordered by the court, and (2) such officer or employee is suspended from his employment during the pendency of such proceedings." These orders were not stayed and it is apparently agreed that the employees were never suspended. From this the government argues that the discharging orders auttomatically became effective at the expiration of 30 days from the date of notice thereof, and therefore moot.

Section 12(b) of the Act (5 U.S.C. § 118k(b)) provides that "if in any case the Commission finds that such officer or employee has not been removed from his office or employment within thirty days after notice of a determination by the Commission that such violation warrants his removal, or that he has been so removed and has subsequently (within a period of eighteen months) been appointed to any office or employment in any state or local agency in such state, the Commission shall make and certify to the appropriate federal agency an order requiring it to withhold from its loans or grants to the state or local agency to which such notification was given an amount equal to two years compensation at the rate such officer or employee was receiving at the time of such violation; * * *." The State of Utah seeks redress from the imposition of a 12(b) withholding order, but there is nothing in this record to show that any such withholding order has been entered by the

Civil Service Commission. In this connection, the government says that a discharging order and withholding order are separate and distinct appealable orders, contingently based upon different factual determinations, and inasmuch as there was no withholding order before the trial court nor this court, there is nothing for review except the mooted discharging orders. The effect of this argument is to hold that a judicial stay of the discharging order and a suspension of the appealing employees is a jurisdictional prerequisite to the right of judicial review of the merits of the Commission's determination. We do not think Congress intended to impose any such procedural prerequisites.

The obvious purpose of the provision to the effect that the commencement of review proceedings shall not operate as a stay unless ordered by the court and unless the employees are suspended is to make sure that the orderly administration of the Act shall not be hindered by judicial review. Thus the enforcement scheme provided for in 12(b) contemplates an order of discharge after a hearing and consequent penalties for failure to comply with such order. The judicial review provided in 12(c) does not, without more, operate to stay the enforcement proceedings. But this does not mean that Congress intended to provide that compliance with the order was prerequisite to the right of review accorded by the statute. To be sure, the withholding order is conditional and contingent upon failure to comply with a discharging order. Indeed, the separate orders are based upon separate and distinct considerations; but each is but a step in the integrated enforcement mechanism. If on appeal the discharging orders fall as not being supported in law and fact the withholding order necessarily

falls with them. The appeal is from that which is basic to the rights of the parties, i.e., the discharging orders.

This is not a case where the purposes of the decree have been fulfilled or the law has spent itself on the operative facts leaving no justiciable issue. Cf. United States v. Alaska S.S. Co., 253 U.S. 133; Walling v. Shenandoah-Dives Mining Co., 134 F.2d 395; Paradise Land and Livestock Co. v. Federal Land Bank, 147 F.2d 594; Chicago G. W. Ry. Co. v. Beeker, 150 F.2d 394; Sobel v. Whittier Corp., 195 F.2d 361. Rather our cases are analogous to an appeal from an unsuperseded judgment, the levy and execution on which does not render moot the basic issues which underly the judgment and upon which its validity rests. Cf. Dakota County v. Glidden, 113 U.S. 222; Holcomb v. Holcomb, 209 F.2d 794; Hill v. United States, 223 F.2d 699; Reserve Life Ins. Co. v. Frankfather, 225 P.2d 1035, 39 A.L.R. 2d 146, Annot. § 10(b), p. 175; 2 Am. Jur., Appeal and Error § 222; 4 C.J.S. Appeal and Error, § 214, p. 636. We hold that the issues did not become moot when and if the discharging orders became effective for failure to stay and suspend.

The only question on the merits is whether the separate judgments of the District Court which affirmed the Commission's orders can be said to be clearly erroneous.

The appellants voice the contention that since they were acting only under the direction and control of Burton, the dismissal of the charges as to him without according like treatment to them was arbitrary and capricious. However, the dismissal of Burton was not a matter of administrative discretion. Upon finding that Burton's principal

employment was not "in connection with" the State Road Commission, the Civil Service Commission was required to dismiss the charges for lack of jurisdiction over his activities. 5 U.S.C. § 118k(a). To be sure the appellants were under the direction of Burton, but they were all in positions of secondary responsibility from which they made demands upon those employed under them. There is nothing to indicate that they acted under duress, and it is no defense to prescribed activities that they were committed on orders from those in higher authority not within the coverage of the Act.

It is also contended that to apply the rule of "diminishing responsibility" to Allred while not applying it equally to these appellants, was arbitrarily unjust. We agree with the Commission that Allred's activities were "minimal in amount." He did, admittedly, solicit funds from other employees, but their affidavits clearly show that no coercion or pressure was used and the donations were free and voluntary. Even if we did not agree with the Commission's critical findings, we could not say that the dismissal of Allred, even if erroneous, leads to the conclusion that all of the charges must be dismissed. It would be fallacious to say merely because one violator escapes punishment that others, equally guilty, should also be dismissed.

In determining whether the affirming judgments of the trial court are clearly erroneous, we must remember that while judicial review extends to both law and fact, "Congress entrusted to the Commission the administration of the Act under defined policies and established standards." Oklahoma v. Civil Service Commission, 153 F.2d 280,

283. And review "is limited to an examination into whether or not the Commission abused its discretion in the order of removal." Oklahoma v. Civil Service Commission, 330 U.S. 127, 145. (same case affirmed).

In these circumstances, we cannot say the Commission arbitrarily and capriciously drew the factual line between the innocuous and the culpable. The judgments are affirmed.

APPENDIX B

Finding of Fact and Conclusions of Law of United States District Court

IN THE UNITED STATES DISTRICT COURT OF UTAH CENTRAL DIVISION JUDGMENT AND DECREE

Civil No. C-129-59

STATE OF UTAH and PANOS J. GEORGOPOULOS,
Petitioners,

—vs.—

UNITED STATES OF AMERICA and the UNITED STATES CIVIL SERVICE COMMISSION,
Respondents.

This is an action under Section 12 of the Hatch Political Activities Act (5 U.S.C. 118k) to review the administrative determination of the United States Civil Service Commission that petitioner Panos J. Georgopoulos has engaged in prohibited political activities warranting his removal from office.

The Court having considered the pleadings, the transcript of the record upon which the determination of the Civil Service Commission was made, the briefs and argument of counsel, and having made and entered its Findings of Fact and Conclusions of Law it is, therefor,

ORDERED, ADJUDGED AND DECREED that the determination of the Civil Service Commission in its report and order of September 10, 1959, that petitioner Georgopoulos engaged in political activities in violation of 5 U.S.C. 118k by soliciting and collecting political contributions from subordinate employees who contributed involuntarily and that petitioner's engaging in such activities warrants his removal from office be and the same is affirmed and the petition of the above named petitioners be and is dismissed.

Dated this .....day of February, 1960.

.....

Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

STATE OF UTAH and PANOS J. GEORGOPOULOS,
Petitioners.

—vs.—

UNITED STATES OF AMERICA
and the
UNITED STATES CIVIL SERVICE COMMISSION,
Respondents.

Civil Action No. C-129-59

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an action under Section 12 of the Hatch Political Activities Act (5 U.S.C. 118k) to review the administration determination of the United States Civil Service Commission that petitioner Panos J. Georgopoulos has engaged in prohibited political activities warranting his removal from office.

The Court having considered the pleadings, the transcript of the record upon which the determination of the Civil Service Commission was made, the briefs and argument of counsel, makes the following:

FINDINGS OF FACT

1. In May 1958, petitioner Georgopoulos' principal employment was as Senior Highway Engineer and Acting Assistant Chief, Right-of-Way Design Department, Utah

State Road Commission. This employment was in connection with an activity financed in whole or in part by loans or grants made by a federal agency, the Bureau of Public Roads;

2. In May 1958 petitioner Georgopoulos, as Senior Highway Engineer and Acting Assistant Chief, Right-of-Way Design Department, Utah State Road Commission, had approximately thirty-five employees under his supervision;

3. In May 1958, Horace J. Gunn, Public Information Officer, Utah State Road Commission, delivered to Vernon P. Bridge, Chief, Right-of-Way Design Department Utah State Road Commission, a letter dated May 15, 1958, addressed "Dear Vern Bridge" and signed by C. Taylor Burton, Chairman of the Utah State Road Commission, *soliciting political contributions* from subordinate employees for the Republican Party organization in Utah;

4. Vernon P. Bridge dictated and signed a letter dated May 16, 1958, attached thereto Mr. Burton's letter of May 15, 1958, and caused such letters to be circulated among his subordinates. Vernon P. Bridge's letter stated:

> Attached is a letter from Mr. Burton.
>
> Since these tickets are $50.00 apiece, the most equitable manner of handling this is for each employee to donate 1.3 per cent of his monthly salary.
>
> Will you all kindly cooperate in order not to throw an additional burden on a few.
>
> Kindly show the amount on the back of this letter you will donate on May 20, along with your

name. The tickets can then be raffled off by picking three names of those donating.

5. During the first circulation of said letters, only one employee signed his name and indicated he would make such a political contribution;

6. Following the first *unsuccessful* circulation of the Burton-Bridge letters among subordinate employees, Vernon P. Bridge called or arranged a meeting in which employees of the Right-of-Way Design Department assembled as a group to discuss the matter of political contributions. At the meeting, petitioner Georgopoulos, in the presence of Vernon P. Bridge, addressed the employee-group, advising them it would be well for them to make political contributions and stating that if they did not do so, recommended increases in pay might be withheld from them. After the meeting, the Burton-Bridge letters were again circulated among employees in petitioner *Georgopoulos' department* and most of them signed on the back of Vernon P. Bridge's letter, specifying the respective amounts they would contribute;

7. Most of the employees of the Right-of-Way Design Department actually made political contributions following the second circulation of the Burton-Bridge letters, and the money was collected for the Republican Party organization in Utah. The full amount of the requested contribution, $150.00, was met;

8. In May 1958, petitioner Georgopoulos, while employed as described above, did directly or indirectly coerce, attempt to coerce, command or advise other officers or

employees subject to the act to pay or contribute part of their salaries or compensation to the Republican Party organization of Utah for political purposes;

9. On August 6, 1958, the Civil Service Commission issued to petitioners Georgopoulos and the State of Utah a letter of charges specifically setting forth asserted violations of 5 U.S.C. 118k by petitioner Georgopoulos and informing petitioners that they had the right to answer the letter of charges and to appear at a hearing in person and by an attorney. Petitioners filed with the Civil Service Commission an answer denying the charges. On January 22, 1959, petitioners and the Civil Service Commission entered into a stipulation by which petitioners waived a hearing, stated certain facts with reference to the charges against petitioner Georgopoulos and stipulated that he had violated 5 U.S.C. 118k.

10. By letter dated June 30, 1959, the Civil Service Commission's Chief Hearing Examiner submitted to counsel for petitioners his tentative recommendations for a decision by the Civil Service Commission that petitioner Georgopoulos be removed from office. By letter dated July 2, 1959, petitioners' counsel notified the Chief Hearing Examiner that he did not desire to furnish further briefs and that he consented that the tentative recommendations be submitted to the Commission for its decision and requested that oral argument be made to the Commission. On July 28, 1959, petitioners' counsel and counsel for the Civil Service Commission presented oral argument before the Commission;

11. On September 10, 1959, the Civil Service Commission issued its report and order "that the respondent Panos J. Georgopoulos violated Section 12(a) of the Hatch Political Activities Act as alleged in the Letter of Charges, by participation in collection of political contributions, coercive in character; and the violation warrants removal from employment by the State of Utah (with ineligibility for reemployment for eighteen months)."

12. Petitioner Geogopoulos has not been suspended or removed from his position with the Utah State Road Commission.

CONCLUSIONS OF LAW

1. In May 1958 while employed as Senior Highway Engineer and Acting Assistant Chief, Right-of-Way Design Department, Utah State Road Commission, petitioner Georgopoulos was subject to the political activity restrictions of 5 U.S.C. 118k;

2. The petitioner violated the provisions of 5 U.S.C. 118k in that he advised and directly and indirectly coerced other officers or employees subject to the act to pay or contribute part of their salaries or compensation to the Republican Party organization of Utah for political purposes;

3. The determination of the Civil Service Commission in its report and order of September 10, 1959, that petitioner Georgopoulos engaged in political activities in violation of 5 U.S.C. 118k by soliciting and collecting political contributions from subordinate employees who contributed involun-

tarily and that petitioner's engaging in such activities warrants his removal from office is supported by substantial evidence and is in accordance with law.

4. The Civil Service Commission's report and order is affirmed.

Dated this.....day of February, 1960.

.....

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Civil No. C-130-59

STATE OF UTAH and HORACE J. GUNN,
Petitioners.

—vs.—

UNITED STATES OF AMERICA and the UNITED STATES CIVIL SERVICE COMMISSION,
Respondents.

JUDGMENT AND DECREE

This is an action under Section 12 of the Hatch Political Activities Act (5 U.S.C. 118k) to review the administrative determination of the United States Civil Service Commission that petitioner Horace J. Gunn has engaged in prohibited political activities warranting his removal from office.

The Court having considered the pleadings, the transcript of the record upon which the determination of the Civil Service Commission was made, and briefs and argument of counsel, and having made and entered its Findings of Fact and Conclusions of Law, it is, therefor,

ORDERED, ADJUDGED AND DECREED that the determination of the Civil Service Commission in its report and order of September 10, 1959, that petitioner Gunn engaged in political activities in violation of 5 U.S.C. 118k by soliciting and collecting political contributions from subordinate employees *who contributed involuntarily* and that petitioner's engaging in such activities warrants his removal from office, be and the same is affirmed and the petition of the above named petitioners be and dismissed.

Dated this ..... day of February, 1960.

.....

Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Civil No. C-130-59

STATE OF UTAH and HORACE J. GUNN,
Petitioners,

—vs.—

UNITED STATES OF AMERICA and the UNITED STATES CIVIL SERVICE COMMISSION,
Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an action under Section 12 of the Hatch Political Activities Act (5 U.S.C. 118k) to review the administrative determination of the United States Civil Service Commission that petitioner Horace J. Gunn has engaged in prohibited political activities warranting his removal from office.

The Court having considered the pleadings, the transcript of the record upon which the determination of the Civil Service Commission was made, and briefs and argument of counsel, makes the following:

FINDINGS OF FACT

1. In May 1958, petitioner Gunn's principal employment was as Public Information Officer, Utah State Road Commission. This employment was in connection with an activity financed in whole or in part by loans or grants made by a federal agency, the Bureau of Public Roads;

2. In May 1958, petitioner Gunn delivered to Vernon P. Bridge, Chief, Right-of-Way Design Department, Utah State Road Commission, a letter dated May 15, 1958, addressed "Dear Vern Bridge" and signed by C. Taylor Burton, Chairman of the Utah State Road Commission, soliciting political contributions from subordinate employees for the Republican Party organization in Utah;

3. During the month of May 1958, petitioner Gunn handled the distribution of tickets within the Utah State Road Commission for the Republican Political Party fund-raising dinner which was to be held at Motel Utah at Salt Lake City, Utah, on May 21, 1958, and personally delivered the tickets to the heads of the 9 Departments within the Utah State Road Commission. Included with the tickets which were given to each Department head for disposition within his Department, was a copy of the Burton letter of May 15, 1958;

4. Petitioner Gunn collected the unsold tickets and the money for the tickets disposed of from the Department heads of the Utah State Road Commission;

5. Petitioner Gunn also directly solicited, received, and handled contributions for the Republican Political Party organization of Utah from employees of the Administrative Office of the Utah State Road Commission;

6. Petitioner Gunn took a leading role in the collection of political contributions from employees subject to to the act for the Republican Party organization of Utah referred to in Findings 3, 4, 5;

7. On August 6, 1958, the Civil Service Commission issued to petitioners Gunn and the State of Utah a letter of charges specifically setting forth asserted violations of 5 U.S.C. 118k by petitioner Gunn and informing petitioners that they had the right to answer the letter of charges and to appear at a hearing in person and by an attorney. Petitioners filed with the Civil Service Commission an answer denying the charges. On January 21, 1959, petitioners and the Civil Service Commission entered into a stipulation by which petitioners waived a hearing, stated certain facts with reference to the charges against petitioner Gunn and stipulated that he had violated 5 U.S.C. 118k.

8. By letter dated June 30, 1959, the Civil Service Commission's Chief Hearing Examiner submitted to counsel for petitioners his tentative recommendations for a decision by the Civil Service Commission that petitioner Gunn be removed from office. By letter dated July 2, 1959, petitioners' counsel notified the Chief Hearing Examiner that he did not desire to furnish briefs and that he consented that the tentative recommendations be submitted to the Commission for its decision and requested that oral argument be made to the Commission. On July 28, 1959, petitioners' counsel and counsel for the Civil Service Commission presented oral argument before the Commission:

9. On September 10, 1959, the Civil Service Commission issued its report and order stating:

> We find that in May 1958, the respondent Horace J. Gunn vidated Sec. 12(a) of the Hatch Political Activities Act by his liaison activities between the Assistant to the Governor, the Chairman of the State Road Commission, and the Department

heads of that Commission, in respect to sale of tickets to a political party dinner; also by direct solicitation and collection of payments toward purchase of such tickets, from individual employees in the said Commission. We do not find that he deliberately intended that employees would be induced to make contributions unwillingly. But we find that he took a leading role in a system of collection of political contributions marked, in our opinion, by patently coercive influence. We find that the violation warrants his removal from employment by the State of Utah (with statutory ineligibility for reemployment within eighteen months).

10. Petitioner Gunn has not been suspended or removed from his position with the Utah State Road Commission.

CONCLUSIONS OF LAW

1. In May 1958 while employed as Public Information Officer, Utah State Road Commission, petitioner Gunn was subject to the political activity restrictions of 5 U.S.C. 118k;

2. The petitioner violated the provisions of 5 U.S.C. 118k in that he advised and directly and indirectly coerced other officers or employees subject to the act to pay or contribute part of their salaries or compensation to the Republican Party organization of Utah for political purposes;

3. The determination of the Civil Service Commission in its report and order of September 10, 1959, that petitioner Gunn engaged in political activities in violation of 5 U.S.C. 118k by soliciting and collecting political contributions from

subordinate employees who contributed involuntarily and that petitioner's engaging in such activities warrants his removal from office is supported by substantial evidence and is in accordance with law.

4. The Civil Service Commission's report and order is affirmed.

Dated this ..... day of February, 1960.

.....

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

STATE OF UTAH and
VERNON P. BRIDGE,
Petitioners,

—vs.—

UNITED STATES OF AMERICA
and the UNITED STATES CIVIL
SERVICE COMMISSION,
Respondents.

Civil No.
C-128-59

JUDGMENT AND DECREE

This is an action under Section 12 of the Hatch Political Activities Act (5 U.S.C. 118k) to review the administrative determination of the United States Civil Service Commission that petitioner Vernon P. Bridge has engaged in prohibited political activities warranting his removal from office.

The Court having considered the pleadings, the transcript of the record upon which the determination of the Civil Service Commission was made, and briefs and argument of counsel, and having made and entered its Findings of Fact and Conclusions of Law, it is, therefor,

ORDERED, ADJUDGED AND DECREED that the determination of the Civil Service Commission in its report and order of September 10, 1959, that petitioner Bridge engaged in political activities in violation of 5 U.S.C. 118k

by soliciting and collecting political contributions from subordinate employees *who contributed involuntarily* and that petitioner's engaging in such activities warrants his removal from office be and the same is affirmed and the petition of the above named petitioners be and is dismissed.

Dated this 14th day of March, 1960.

.....

Chief Judge

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an action under Section 12 of the Hatch Political Activities Act (5 U.S.C. 118k) to review the administrative determination of the United States Civil Service Commission that petitioner Vernon P. Bridge has engaged in prohibited political activities warranting his removal from office.

The Court having considered the pleadings, the transcript of the record upon which the determination of the Civil Service Commission was made, and briefs and argument of counsel, makes the following:

FINDINGS OF FACT

1. In May 1958, petitioner Bridge's principal employment was as Chief, Right-of-Way Design Department, Utah State Road Commission. This employment was in connection with an activity financed in whole or in part by loans or grants made by a federal agency, the Bureau of Public Roads;

2. In May 1958 petitioner Bridge, as Chief of the Right-of-Way Department, Utah State Road Commission had approximately thirty-five employees under his supervision;

3. In May 1958, Horace J. Gunn, Public Information Officer, Utah State Road Commission, delivered to petitioner Bridge a letter dated May 15, 1958, addressed "Dear Vern Bridge" and signed by C. Taylor Burton, Chairman of the Utah State Road Commission, soliciting political contributions from subordinate employees for the Republican Party organization in Utah;

4. Petitioner Bridge dictated and signed a letter dated May 16, 1958, attached thereto Mr. Burton's letter of May 15, 1958, and caused such letters to be circulated among his subordinates. Petitioner Bridge's letter stated:

Attached is a letter from Mr. Burton.

Since these tickets are $50.00 apiece, the most equitable manner of handling this is for each employee to donate 1.3 per cent of his monthly salary.

Will you all kindly cooperate in order not to throw an additional burden on a few.

Kindly show the amount on the back of this letter you will donate on May 20, along with your name. The tickets can then be raffled off by picking three names of those donating.

5. During the first circulation of said letters, only one employee signed his name and indicated he would make such a political contribution;

6. Following the first unsuccessful circulation of the Burton-Bridge letters among petitioner Bridge's subordinates, he called or arranged a meeting in which employees of the Right-of-Way Design Department assembled as a group to discuss the matter of political contributions. At the meeting, Panos J. Georgopoulos, Assistant Chief, Right-of-Way Design Department, in the presence of petitioner Bridge, addressed the employee-group, advising them it would be well for them to make political contributions and stating that if they did not do so, recommended increases in pay might be withheld from them. After the meeting, the Burton-Ridge letters were again circulated among employees in petitioner Bridge's department and most of them signed on the back of petitioner Bridge's letter, specifying the resepective amounts they would contribute;

7. Most of the employees of the Right-of-Way Design Department actually made political contributions following the second circulations of the Burton-Bridge letters, and the money was collected for the Republican Party organization in Utah. The full amount of the requested contribution, $150.00, was met;

8. In May 1958, petitioner Bridge, while employed as described above, did directly or indirectly coerce, attempt to coerce, command or advise other officers or employees subject to the act to pay or contribute part of their salaries or compensation to the Republican Party organization of Utah for political purposes;

9. On August 6, 1958, the Civil Service Commission issued to petitioners Bridge and the State of Utah a letter of charges specifically setting forth asserted violations of

5 U.S.C. 118k by petitioner Bridge and informing petitioners that they had the right to answer the letter of charges and to appear at a hearing in person by an attorney. Petitioners filed with the Civil Service Commission an answer denying the charges. On January 21, 1959, petitioners and the Civil Service Commission entered into a stipulation by which petitioners waived a hearing, stated certain facts with reference to the charges against petitioner Bridge and sipulated that he had violated 5 U.S.C. 118k.

10. By letter dated June 30, 1959, the Civil Service Commission's Chief Hearing Examiner submitted to counsel for petitioners his tentative recommendations for a decision by the Civil Service Commission that petitioner Bridge be removed from office. By letter dated July 2, 1959, petitioners' counsel notified the Chief Hearing Examiner that he did not desire to furnish further briefs and that he consented that the tentative recommendations be submitted to the Commission for its decision and requested that oral argument be made to the Commission. On July 28, 1959, petitioners' counsel and counsel for the Civil Service Commission presented oral argument before the Commission;

11. On September 10, 1959, the Civil Service Commission issued its report and order "finding that the respondent Vernon P. Bridge violated Section 12 (a) of the Hatch Political Activities Act as alleged in the Letter of Charges, by participation in collection of political contributions, coercive in character; and the violation warrants removal from employment by the State of Utah (with ineligibility for reemployment for eighteen months)."

12. Petitioner Bridge has not been suspended or removed from his position with the Utah State Road Commission.

CONCLUSION OF LAW

1. In May 1958 while employed as Chief, Right-of-Way Design Department, Utah State Road Commission, petitioner Bridge was subject to the political activity restrictions of 5 U.S.C. 118k;.

2. The petitioner violated the provisions of 5 U.S.C. 118k in that he advised and directly and indirectly coerced other officers or employees subject to the act to pay or contribute part of their salaries or compensation to the Republican Party organization of Utah for political purposes;

3. The determination of the Civil Service Commission in its report and order of September 10, 1959, that petitioner Bridge engaged in political activities in violation of 5 U.S.C. 118k by soliciting and collecting political contributions from subordinate employees who contributed involuntarily and that petitioner's engaging in such activities warrants his removal from office is supported by substantial evidence and is in accordance with law.

4. The Civil Service Commission's report and order is affirmed.

Dated this 14 day of March, 1960.

WILLIS W. RITTER
Chief Judge

Filed March 14, 1960.

APPENDIX B

Report and Order of the Civil Service Commission

UNITED STATES OF AMERICA

Before the United States Civil Service Commission

In the Matter of
HORACE J. GUNN
and
THE STATE OF UTAH

Docket No. 230

Headnote: It is found that the respondent Gunn violated Sec. 12(a) of the Hatch Act as alleged in the Letter of Charges, and that the violation warrants removal from employment by the State of Utah.

The UNITED STATES CIVIL SERVICE COMMISSION, in session at its offices in Washington, D.C. September 10, 1959, votes having been recorded by

CHAIRMAN JONES, COMMISSIONER GUNDERSON
COMMISSIONER LAWTON

completes action upon the record entitled above, and further captioned

Before JAMES W. IRWIN, Chief Hearing Examiner
—with appearance by—
ARMIN G. CLEMENT, Esq., for the Government;
E. R. CALLISTER, Attorney General of Utah and
WALTER L. BUDGE, Asst. Attorney General, later
Attorney General for the Respondents;

and being fully advised in the premises, approves the following decision.

REPORT AND ORDER OF THE COMMISSION

The respondent Horace J. Gunn at times referred to herein was (and so far as we are informed, still is) Public Information Officer of the Utah State Road Commission. A complaint having been made to this Commission that certain officials of the said Commission had violated Sec. 12(a) of the Hatch Political Activities Act (54 Stat. 767; 5 U.S.C. 118k), our General Counsel instituted an investigation, and in August, 1959, issued Letters of Charges directed respectively, to five persons, including the respondent above named, and to the State of Utah as co-respondent.

In this proceeding the Letter of Charges alleged that Mr. Gunn's "principal employment" was his position with the Road Commission, and was "in connection with an activity financed in whole or in part by loans or grants made by the United States through the Bureau of Public Roads"; that in May, 1958 while so employed he "did directly or indirectly coerce, attempt to coerce, or advise other officers or employees to * * * contribute a part of their salaries or compensation to the Republican Party Organization in Utah for Political purposes"; that "he solicited" such contributions; that "he assisted in * * * a plan" for such "involuntary giving," and "distributed political party dinner tickets," and "received and handled political contributions" from personnel of the Road Commission.

The Respondents' Answer admitted Mr. Gunn's employment by the Road Commission since August 1957, but denied all other allegations of the Letter of Charges. Hearings on this and companion cases were set for Salt Lake

City to begin October 8, 1958, but were postponed at the request of the defense, and were reset by agreement to begin December 10. A few days prior thereto Attorney General Callister proposed, and our General Counsel approved, that in lieu of hearings the cases should be submitted upon stipulations.

In the Stipulation in this proceeding the defense concedes that "Respondent Horace J. Gunn violated the provisions of the Hatch Political Activities Act of 1939, as amended."

We make the following factual findings from recitals in the Stipulation:

> "Respondent Horace J. Gunn was requested by the Administrative Assistant to the Governor of the State of Utah, to handle the distribution of tickets within the Utah State Road Commission for the Republicans Political Party Fund-Raising Dinner, to be held * * * on May 21, 1958.
>
> "[He did so] and personally delivered the tickets to the heads of the 9 Departments * * *. Included with the tickets given to each Department head * * * was a copy of the letter dated May 15, 1958, signed by C. Taylor Burton, Chairman of the Utah State Road Commission.
>
> "[He] collected the unsold tickets and money for the tickets * * * from the Department heads * * *, which money had been obtained within their Departments through the sale of tickets * * *, and accounted to the Administrative Assistant to the Governor.
>
> "[He] also directly solicited, received, and handled contributions for the Republican Party Organization * * * from employees of the Administrative Office of the Utah Road Commission."

The following additional findings of fact are drawn from a defense affidavit by Mr. Gunn, taken by Assistant Attorney General Budge. (There is no evidence contradictory of these findings.)

> After being approached about disposition of tickets in the Road Commission, Mr. Gunn talked to Director of Highways Armstrong, his official superior. The latter "was at a loss as to what should be done," and "nothing was done for some time." Calls came "a number of times about what" they "were going to do". Mr. Armstrong "finally decided" that Mr. Burton, Chairman of the Road Commission, "should be brought in and the matter turned over to him." Mr. Burton "made up a letter to Department heads, soliciting their support on the matter." Mr. Gunn understood that it was Chairman Burton's wish that contributions should be on a voluntary basis, with no coercion, and that he (Gunn) should so inform the Department heads. He explained this to all Department heads except Mr. Bridge, Chief of the Right of Way Design Department, whom he did not see personally, and who did not respond to Mr. Gunn's notation asking that Bridge telephone him.
>
> He "personally contacted people around the Capitol who worked near" him. However, he tried to obtain contributions on a "strictly voluntary basis." He considers that his own was voluntary; and "several did not contribute."

The Letter of Charges emphasizes the coercion alleged ly incident to Mr. Gunn's actions. That element is immaterial on the issue of violation. This is recognized by the respondents; for they deny coercion, but admit violation. Upon the issue of whether the violation warrants removal from employment by the State of Utah, both sides

mitted briefs and argued orally before the Commission at Washington.

Regardless of what Mr. Burton may have wished or Mr. Gunn may have intended employee reaction to be, the plan and operation of the solicitation were inherently coercive in character. And it is observed from Mr. Gunn's defense affidavit that he (like Mr. Armstrong) had misgivings concerning what he had been asked to do.

Chairman Burton's letter (which appears in full as an appendix to Report and Order in the companion *Bridge* case) was an appeal to Department heads and through them to employees generally. It stated that "every citizen should support the party of his choice," that "all should support their party organizations by supporting fund raising drives or by direct contributions"; that "we all have full confidence" in the Republican Party; that the Party was to hold a fund raising dinner on a specified date; and that tickets had been prorated to the Departments on the Road Commission. Department heads were asked to report on disposition of tickets within five days.*

To us it seems obvious, and we believe it should have been recognizable to anyone giving serious thought, that an employee receiving such advice and solicitation from the Chairman of the Commission, reinforced by approval of his Department head, might feel that it would be indiscreet not to comply. That is not now a matter of surmise. It is abundantly clear from affidavits of employees embodied in the report of Civil Service Commission investigators.

*Employees made payments of modest size, and drew lots to see who got the $50.00 tickets.

that many employees were thus induced to contribute unwillingly. It was agreed by all parties in their Stipulation of Facts that these affidavits "shall be considered a part of this stipulation as if included therein."

We find that in May 1958, the respondent Horace J. Gunn violated Sec. 12(a) of the Hatch Political Activities Act by his liaison activities between the Assistant to the Governor, the Chairman of the State Road Commission, and the Department Heads of that Commission, in respect to sale of tickets to a political party dinner; also by direct solicitation and collection of payments toward purchase of such tickets, from individual employees in the said Commission. We do not find that he deliberately intended that employees would be induced to make contributions unwillingly. But we find that he took a leading role in a system of collection of political contributions marked, in our opinion, by patently coercive influence. We find that the violation warrants his removal from employment by the State of Utah (with statutory ineligibility for reemployment within eighteen months).

It Is Ordered, that our records show the determinations set forth in the preceding paragraph; that this decision be authenticated by the signature of an authorized official; and that due notice thereof be given to parties in interest.

BY THE COMMISSION:

WILLIAM C. HULL
Executive Assistant

UNITED STATES OF AMERICA

Before the United States Civil Service Commission

In the Matter of PANOS J. GEORGOPOULOS and THE STATE OF UTAH	Docket No. 229

Headnote: It is found that the respondent Georgopoulos violated Sec. 12(a) of the Hatch Act as alleged in the Letter of Charges, and that the violation warrants removal from employment by the State of Utah.

The UNITED STATES CIVIL SERVICE COMMISSION, in session at its offices in Washington, D.C., September 10, 1959, votes having been recorded by

CHAIRMAN JONES, COMMISSIONER GUNDERSON
COMMISSIONER LAWTON

completes action upon the record entitled above, and further captioned

Before JAMES W. IRWIN, Chief Hearing Examiner
—with appearances by—
ARMIN G. CLEMENT, Esq., for the Government;

E. R. CALLISTER, Attorney General of Utah, and WALTER L. BUDGE, Asst. Attorney General, later Attorney General, for the Respondents;

and being fully advised in the premises, approved this Report and Order.

REPORT AND ORDER OF THE COMMISSION

I. CHARGES, ANSWERS, and STIPULATION

A complaint was made to this Commission that Section 12(a) of the Hatch Political Activities had been violated

by certain of the personnel of the Road Commission of the State of Utah, by solicitation and collection of political campaign contributions from employees. Our General Counsel instituted an investigation, and issued Letters of Charges in August, 1959, against five officials of that Commission including the respondent Panos J. Georgopoulos, *Senior Highway Enginner and Acting Assistant Chief of the Right of Way Design Department,* which is headed by Vernon P. Bridge.

The Letter of Charges alleged in substance that Mr. Georgopoulos's position with the Road Commission was his "principal employment," and was "in connection with an activity financed in whole or in part by loans or grants made by the United States through the Bureau of Public Roads"; and that in May, 1958 while so employed he "did directly or indirectly coerce, attempt to coerce, or advise other officers or employees to • • • contribute a part of their salaries or compensation to the Republican Party Organization in Utah for Political purposes"; that "he solicited" such contributions; "assisted in • • • or promoted a plan" for such "involuntary giving," and "received and handled political contributions" from personnel of the Road Commission.

Honorable E. R. Callister, Attorney General of the State of Utah, filed a joint Answer for the respondent Georgopoulos and the State. It admitted Mr. Georgopoulos's employment as alleged, that it was his "principal employment," and that it was "in connection with" an activity Federally financed in whole or part. It denied allegations of prohibited political activity, and said, "All tickets sold

to the Republican Fund Raising Dinner held on May 21, 1958, were without compulsion and voluntary."

Hearings on this and companion cases were scheduled for Salt Lake City beginning October 8, 1958, but were postponed at the request of the defense, for good cause shown. They were reset by agreement to begin December 10, but a few days prior thereto Attorney General Callister proposed — and our General Counsel approved — that hearings be dispensed with, and submission to the Commission be upon Stipulations of Facts, upon the general import of which they agreed.

A stipulatioin in this proceeding was thereafter executed on behalf of the individual respondent, the State of Utah, and the General Counsel of this Commission. In it the respondents concede the allegation of the Letter of Charges of Federal aid to the State Road Commission and of the respondent's "principal employment." It further says: "The parties agree that Panos J. Georgopoulos violated the provisions of the Hatch Political Activities Act of 1939, as amended."

Therefore, the only contested question is whether the violation warrants Mr. Georgopoulos' removal from employment by the State of Utah. Upon that issue, both sides submitted briefs and argued orally before the Commission at Washington.

II. FACTS IN EVIDENCE

From affidavits and documents stipulated as evidence, we make these findings:

In May 1958, C. Taylor Burton, Chairman of the Utah Road Commission, wrote a letter to Vernon P. Bridge, Chief of the Right of Way Design Department, saying that the Commission had been "asked to contribute its share" to a fund raising dinner at the Republican party; and assigning three tickets to be disposed of at $50.00 each in Mr. Bridge's department. Mr. Bridge thereupon wrote a letter saying, "The equitable manner of handling this is for each employee to donate 1.3 per cent of his monthly salary." He had both letters circulated to employees, requesting that they sign and state the amounts they pledged. When the letters had gone through the Department, only one person had complied.

An employee meeting was then called. The Stipulation says: "Mr. Georgopoulos led a discussion among the employees concerning the matter of political contributions preliminary to the second circulation of the letters." This is developed in a defense affidavit by the respondent, taken by Assistant State Attorney General Budge, on December 10, 1958, as follows:

> I just explained * * * that I thought that it would be a good idea to go along with them to contribute our share * * * because from what I had heard in past years, I had a pretty good idea that if our group, as a group, did not contribute * * * it would be to our disadvantage; * * * if we did not * * * requests for raises will be turned down * * *. I told them that as far as I was concerned they could do as they pleased. I didn't like to give out money any more than anyone else did.
>
> * * *
>
> MR. BUDGE: Did anyone ever tell you that if you

didn't make a contribution you wouldn't get a pay raise?

MR. GEORGOPOULOS: No. It was just my own opinion.

The foregoing accords with several employee affidavits as to what Mr. Georgopoulos said at the meeting.

After this meeting, which was attended by Mr. Bridge, the two letters were again presented to the employees, and the requested $150.00 was subscribed. Contributors drew lots for the three tickets.

III. CONCLUSIONS and ORDER

We find that all allegations of the Letter of Charges are substained. The question is whether the violation warrants removal from employment.

Evidence is convincing that in what Mr. Georgopoulos did he was not actuated by political zeal: but by what he conceived to be the interest of other employees and himself. But regardless of motive, he took an active and effective part in obtaining political contributions from reluctant employees.

It Is Ordered, that our records show this Commission's decision that the respondent Panos J. Georgopoulos violated Section 12(a) of the Hatch Political Activities Act as alleged in the Letter of Charges by participation in collection of political contributions, coercive in character; and that the violation warrants removal from employment by the State of Utah (with ineligibility for reemployment for eighteen months).

It is Further Ordered that this decision be authenti cated by the signature of an authorized official; and that due notice thereof be given parties in interest.

BY THE COMMISSION:

WILLIAM C. HULL
Executive Assistant

United States of America Before the United States Civil Service Commission In the Matter of Vernon P. Bridge and The State of Utah Docket No. 228

REPORT AND ORDER OF THE COMMISSION

Headnote: It is found that the respondent Bridge violated Sec. 12 (a) of the Hatch Act as alleged in the Letter of Charges, and that the violation warrants removal from employment by the State of Utah,

The United States Civil Service Commission, in session at its offices in Washington, D. C. September 10, 1959, votes having been recorded by Chairman Jones, Commissioner Gunderson, Commissioner Lawton completes action upon the record entitled above, and further captioned Before James W. Irwin, Chief Hearing Examiner—with appearances by — Armin G. Clement, Esq., for the Government: E. R. Callister, Attorney General of Utah, and Walter L. Budge, Asst. Attorney General, later Attorney General, for the Respondent; and being fully advised in the premises: approves this Report and Order.

I. CHARGES and ANSWERS

A complaint was made to this Commission that Section 12(a) of the Hatch Political Activities Act had been violated by certain of the personnel of the Road Commission of the State of Utah, by solicitation and collection of political campaign contributions from employees. Our General Counsel instituted an investigation and issued Letters of Charges in August, 1958, against five officials of that Commission including the respondent Vernon P. Bridge, Chief Right of Way Design Engineer. In each proceeding, the State was designated as co-respondent.

The Letter of Charges in this case alleged in substance that his said position was Mr. Bridge's principal employment, and was in connection with activities "financed in whole or in part by loans or grants made by the United States through the Bureau of Public Roads"; and that in May, 1958 while so employed he "did directly or indirectly coerce, attempt to coerce, or advise other officers or employees to * * * contribute a part of their salaries or compensation to the Republican Party Organization in Utah for political purposes"; that "he solicited" such contributions; "assisted in * * * or promoted a plan" for such "involuntary giving," and "received and handled political contributions" from personnel of the Road Commission.

Honorable E. R. Callister, Attorney General of the State of Utah, filed a joint Answer for the respondent Bridge and the State. It admitted Mr. Bridge's employment by the State Road Commission as alleged. It denied that his principal employment was in connection with activities Federally financed in whole or in part. It denied his

"coercing, attempting to coerce, or advising" the making of contributions, and stated "any and all tickets sold to the Republican Fund Raising Dinner held on May 21, 1958, were without compulsion and voluntary."

II. SUBSEQUENT PROCEDURE: STIPULATIONS

Hearings on this and companion cases were scheduled to be held at Salt Lake City beginning October 8, 1958, but were postponed at the request of the defense, for good cause shown. They were reset by agreement to begin December 10, but a few days prior to that date Attorney General Callister proposed — and our General Counsel approved — that the hearings be dispensed with, and the proceedings be submitted to the Commission upon Stipulations of Facts, the general import of which they agreed upon. The Stipulations were thereafter executed and filed on behalf of the several individual respondents, the State of Utah, and the General Counsel of this Commission. They provided for filing of briefs, and both sides have done so.

In the Stipulation in this proceeding the respondents concede the allegations of the Letter of Charges concerning Federal aid to the State Road Commission. It further says: "The parties to this stipulation agree that Vernon P. Bridge violated the provisions of the Hatch Political Activities Act of 1939, as amended."

The following factual details are from the Stipulation.

In May 1958 Horace J. Gunn delivered to Mr. Bridge a letter from Taylor Burton, Chairman of the State Road Commission regarding a "fund raising dinner for the

State Republican Party," to which — it said — "The State Road Commission has been asked to contribute its share." The respondent had the Chairman's letter circulated among the approximately thirty-five employees of his department, with one from himself attached. Mr. Bridge's letter (or memorandum) stated that the three tickets assigned to his department were $50.00 each, and that "the most equitable" plan was "for each employee to donate 1.3 per cent of his monthly salary." Employees were asked to sign "on the back of this letter" and to "show the amount" they would "donate." This effort secured only one signature.

This Stipulation continues, "A meeting was thereafter held in which employees of the Right of Way Design Department were assembled as a group to discuss the matter of political contributions. After the meeting the letters were again circulated among the employees." Although it does not appear from the Stipulation (except by is approval of other evidence), the meeting and second circulation secured the desired $150.00.

The provision concerning other evidence is as follows:

This stipulation includes as a part of the record • • • affidavits, documentary evidence and testimony obtained by representatives of the Civil Service Commission • • • and also includes affidavits taken by the Office of the Attorney General of Utah • • • and these affidavits, documentary evidence, and testimony shall be considered a part of this Stipulation as if included herein.

(It is not stipulated, of course, that statements in the affidavits are true; merely that they be considered as testimony.)

So that they may be seen in their entirety, a copy of the Stipulation is attached as Appendix A to this Report and Order; and copies of the Burton and Bridge letters (which were stipulated as correct) as Appendix B.

After copies of the hearing examiner's recommendation for a Commission decision had been received by the attorneys of record, and before it had been submitted to the Commission, Utahs' Attorney General Budge (successor o Attorney General Callister) requested oral argument before the Commission. The request was granted, and on July 28, 1959, argument was presented by Attorney General Budge and Civil Service Commission General Counsel Meloy.

III. DISCUSSION OF ISSUES: AND COMMISSION DETERMINATIONS

In Section 12 (a) proceedings there are two major issues:

First, did the respondent violate the statute? and (if so);

Second, does the violation warrant removal from employment by the State or local agency?

In the instant case the first issue is absent. The stipulated facts show violation—as is conceded by the defense.

The Letter of Charges alleges that Mr. Bridge's actions in soliciting political contributions were coercive. Whether that is true, is immaterial on the issue of violation. This is recognized by the respondents; for they deny coercion, but admit violation. The issue, therefore, is whether the violation warrants removal from employment by the State, with ineligibility for reemployment for eighteen months.

Mr. Bridge's affidavit taken January 21, 1959, by questions and answers, replying to Deputy Attorney General Budge's query whether he demanded contribution, said: "I didn't make any demand except passing on Mr. Burton's letter with my letter attached." Mr. Bridge stated further that he did not consider Mr. Burton's letter to be demand; that he understood contributions were voluntary; and that his own was purely so. Asked, "Was anyone ever told that if they did not donate they would not receive a pay increase?" He replied: "Well, I think George Georgopoulos, is an employees' meeting, may have said he felt that would be the case." He stated that neither he, nor within his knowledge any superior of Mr. Georgopoulos, authorized such statement.

We need not say in this decision what the effect upon the issue of removal would have been if the solicitation of contributions in the Road Commission, and Mr. Bridge's, part therein, had been free of coercive influence. They were not.

In In The Matter of Hutchins and the State of Arizona, No. 114, Hatch Act Decisions, page 279, this is said:

Naturally, the employees felt a strong constaint to accept the invitation [of official superiors to make political contributions.] Webster defines coercion thus:

> The application to another of such force, either physical or moral, as to constrain him to do against his will something he otherwise would not have done.

We adopt that definition; and we have no hesitation in saying that the plan of solicitation followed in the Arizona Highway Department in 1941-2 involved coercion. We find that those responsible for its operation took an active part in a political campaign and in political management.

The same finding is applicable to the instant case.

Mr. Bridge's first request for contributions, reinforced by Mr. Burton's letter, having been declined by employees, is inconsistent with the theory that donations afterwards made by them were free will offerings, as also are the other circumstances under which they were obtained.

Affidavits by employees in the Department headed by Mr. Bridge show that many payments were not induced by interest in the cause. The predominantly assigned reason was fear that if the Department failed to subscribe the requested amount, recommended pay raises would be refused by State Officials. Some stated that they gave because they thought that not to do so would require Mr. Bridge or fellow employees to make up the deficit.

Fear of reprisals if the Department did not meet the request for $15000 was inculcated by statements at a meet-

ng of employees after the first solicitation failed. The Assistant Chief under Mr. Bridge emphasized that possibility. Mr. Bridge had authorized the meeting, and attended it.

While employee affidavits indicate strong resentment against the solicitation, none was expressed toward Mr. Bridge. His subordinate seem to have regarded him highly, and to have felt that in soliciting donations he acted under pressure.

Although this respondent was in a sense a "middleman," he took an active part in collecting political contributions from official subordinates. It may be added, from reluctant subordinates.

It is Ordered that our records show this Commission's finding that the respondent Vernon P. Bridge violated Section 12(a) of the Hatch Political Activities Act as alleged in the Letter of Charges, by participation in collection of political contributions, coercive in character; and the violation warrants removal from employment by the State of Utah (with ineligibility for reemployment for eighteen months).

It is Further Ordered that this decision be authenticated by the signature of an authorized official; and that due notice thereof be given parties in interest.

By The Commission:

WILLIAM C. HULL
Executive Assistant